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Attorneys for Defendant
6 SIEMENS PRODUCT LIFECYCLE
MANAGEMENT SOFTWARE INC.
7 (formerly known as UGS CORP.)

8
9 IN THE UNITED STATES DISTRICT COURT FOR THE
10 NORTHERN DISTRICT OF CALIFORNIA
11 SAN FRANCISCO/OAKLAND DIVISION

12 VANESSA FLINT, Individually and On Behalf
of All Others Similarly Situated,

13 Plaintiffs,

14 v.

15 UGS CORPORATION and DOES 1 through
16 100, inclusive,

17 Defendants.

Case No. C 07 4640 MJJ

(Removed from San Francisco Superior
Court on September 7, 2007; Case
No:CGC-07-465695)

CLASS ACTION

STIPULATED PROTECTIVE ORDER

Judge: Hon. Martin J. Jenkins

1 Plaintiff Vanessa Flint ("Plaintiff") and Defendant SIEMENS PRODUCT LIFECYCLE
2 MANAGEMENT SOFTWARE INC. (formerly known as "UGS CORPORATION")
3 ("Defendant") (collectively the "Parties" to this Stipulated Protective Order), by and through their
4 respective Counsel, stipulate to this Protective Order, to protect the confidential information that
5 may be produced by the parties in response to discovery requests, including subpoena(s) for
6 documents or testimony, as may be necessary during the pendency of this above-entitled
7 litigation, and to render moot any objection to discovery on the ground of privilege based on
8 proprietary or confidential information or trade secrets.

9 **1. PURPOSES AND LIMITATIONS**

10 Disclosure and discovery activity in this action are likely to involve production of
11 confidential, proprietary, or private information for which special protection from public
12 disclosure and from use for any purpose other than prosecuting this litigation would be warranted.
13 The parties acknowledge that this Protective Order does not confer blanket protections on all
14 disclosures or responses to discovery and that the protection it affords extends only to the limited
15 information or items that are entitled under the applicable legal principles to treatment as
16 confidential. The parties further acknowledge, as set forth in Section 10, below, that this
17 Protective Order creates no entitlement to file confidential information under seal.

18 **2. DEFINITIONS**

19 2.1 Party: any party to this action, including any of its officers, directors, employees,
20 consultants, retained experts, and outside counsel (and their support staff).

21 2.2 Disclosure or Discovery Material: all items or information, regardless of the
22 medium or manner generated, stored, or maintained (including, among other things, testimony,
23 transcripts, or tangible things) that are produced or generated in disclosures or responses to
24 discovery or otherwise provided by a party to another party in this matter.

25 2.3 "CONFIDENTIAL" Information or Items: information (regardless of how
26 generated, stored or maintained) or tangible things that qualify for protection under standards
27 developed under the Federal Rules of Civil Procedure. The parties agree that documents already
28 produced shall not be retrospectively designated under Section 2.3 or 2.4. Without limiting the

1 terms hereof, the parties agree that documents including third party personnel and payroll records,
2 and Defendant's information about wages, personnel policies and procedures, training materials
3 and other business information that could injure Defendant if disseminated to the public or its
4 competitors, such as sales reports, sales associate productivity reports, product reports, payroll
5 reports, company forms for internal compliance with Defendant's standards and Defendant's
6 weekly transmittals, may be designated as Confidential under Section 2.3.

7 2.4 "HIGHLY CONFIDENTIAL - ATTORNEYS' EYES ONLY" Information or
8 Items: extremely sensitive "Confidential Information or Items" whose disclosure to another Party
9 or non-party would create a substantial risk of serious injury that could not be avoided by less
10 restrictive means.

11 2.5 Receiving Party: a Party that receives Disclosure or Discovery Material from a
12 Producing Party.

13 2.6 Producing Party: a Party or non-party that produces Disclosure or Discovery
14 Material in this action.

15 2.7 Designating Party: a Party or non-party that designates information or items that it
16 produces in disclosures or in responses to discovery "CONFIDENTIAL" or "HIGHLY
17 CONFIDENTIAL – ATTORNEYS' EYES ONLY."

18 2.8 Protected Material: any Disclosure or Discovery Material that is designated as
19 "Confidential" or as "Highly Confidential - Attorneys' Eyes Only."

20 2.9 Outside Counsel: attorneys who are not employees of a Party but who are retained
21 to represent or advise a Party in this action.

22 2.10 House Counsel: attorneys who are employees of a Party.

23 2.11 Counsel (without qualifier): Outside Counsel and House Counsel (as well as their
24 support staff).

25 2.12 Expert: a person with specialized knowledge or experience in a matter pertinent to
26 the litigation who has been retained by a Party or its Counsel to serve as an expert witness or
27 consultant in this action and who is not a current employee of a Party, a past employee of any
28 other Party, or a current employee of any other Party, and who, at the time of retention, is not

1 anticipated to become an employee of a Party or a competitor of any other Party. This definition
2 includes a professional jury or trial consultant retained in connection with this litigation.

3 2.13 Professional Vendors: persons or entities that provide litigation support services
4 (e.g., photocopying; videotaping; translating; preparing exhibits or demonstrations; organizing,
5 storing, retrieving data in any form or medium; etc.) and their employees and subcontractors.

6 **3. SCOPE**

7 The protections conferred by this Protective Order cover only Protected Material (as
8 defined above), and information copied or extracted therefrom, as well as all copies, excerpts,
9 summaries, testimony referring to Protected Material, or compilations thereof.

10 **4. DURATION**

11 Even after the termination of this litigation, the confidentiality obligations imposed by this
12 Order shall remain in effect until a Designating Party agrees otherwise in writing or a court order
13 otherwise directs.

14 **5. DESIGNATING PROTECTED MATERIAL**

15 5.1 Exercise of Restraint and Care in Designating Material for Protection: Each Party
16 or non-party that designates information or items for protection under this Protective Order must
17 take care to limit any such designation to specific material that is properly subject to protection
18 under FRCP Rule 26(c) and counsel shall not designate any discovery material
19 "CONFIDENTIAL" without first making a good faith determination that protection is warranted.
20 A Designating Party must take care to designate for protection only those parts of material,
21 documents, items, or oral or written communications that qualify so that other portions of the
22 material, documents, items, or communications for which protection is not warranted are not
23 swept unjustifiably within the ambit of this Protective Order.

24 Mass, indiscriminate, or routinized designations are prohibited. Designations that are
25 shown to be clearly unjustified, or that have been made for an improper purpose (e.g., to
26 unnecessarily encumber or retard the case development process, or to impose unnecessary
27 expenses and burdens on other parties), expose the Designating Party to sanctions.

28 If it comes to a Party's or a non-party's attention that information or items that it

1 designated for protection do not qualify for protection at all, or do not qualify for the level of
2 protection initially asserted, that Party or non-party must promptly notify all other parties that it is
3 withdrawing the mistaken designation.

4 5.2 Manner and Timing of Designations: Except as otherwise provided in this Order
5 (see, e.g., second paragraph of section 5.2(a), below), or as otherwise stipulated or ordered,
6 material that qualifies for protection under this Order must be clearly so designated before the
7 material is disclosed or produced. Designation in conformity with this Order requires:

8 (a) for information in documentary form (apart from transcripts of depositions
9 or other pretrial or trial proceedings), that the Producing Party affix the legend
10 “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL - ATTORNEYS’ EYES ONLY” at the top
11 or bottom of each page that contains protected material. If only a portion or portions of the
12 material on a page qualifies for protection, the Producing Party also must clearly identify the
13 protected portion(s) (e.g., by making appropriate markings in the margins) and must specify, for
14 each portion, the level of protection being asserted (either “CONFIDENTIAL” or “HIGHLY
15 CONFIDENTIAL - ATTORNEYS’ EYES ONLY”).

16 A Party or non-party that makes original documents or materials available for inspection
17 need not designate them for protection until after the inspecting Party has indicated which
18 material it would like copied and produced. During the inspection and before the designation, all
19 of the material made available for inspection shall be deemed “HIGHLY CONFIDENTIAL -
20 ATTORNEYS’ EYES ONLY.” After the inspecting Party has identified the documents it wants
21 copied and produced, the Producing Party must determine which documents, or portions thereof,
22 qualify for protection under this Order, then, before producing the specified documents, the
23 Producing Party must affix the appropriate legend (“CONFIDENTIAL” or “HIGHLY
24 CONFIDENTIAL - ATTORNEYS’ EYES ONLY”) at the top of each page that contains
25 Protected Material. If only a portion or portions of the material on a page qualifies for protection,
26 the Producing Party also must clearly identify the protected portion(s) (e.g., by making
27 appropriate markings in the margins) and must specify, for each portion, the level of protection
28 being asserted (either “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL - ATTORNEYS’

1 EYES ONLY”).

2 (b) for testimony given in deposition or in other pretrial or trial proceedings,
3 that the Party or non-party offering or sponsoring the testimony identify on the record, before the
4 close of the deposition, hearing, or other proceeding, all protected testimony, and further specify
5 any portions of the testimony that qualify as “HIGHLY CONFIDENTIAL - ATTORNEYS’
6 EYES ONLY.” When it is impractical to identify separately each portion of testimony that is
7 entitled to protection, and when it appears that substantial portions of the testimony may qualify
8 for protection, the Party or non-party that sponsors, offers, or gives the testimony may invoke on
9 the record (before the deposition or proceeding is concluded) a right to have up to 20 days to
10 identify the specific portions of the testimony as to which protection is sought and to specify the
11 level of protection being asserted (“CONFIDENTIAL” or “HIGHLY CONFIDENTIAL -
12 ATTORNEYS’ EYES ONLY”). Only those portions of the testimony that are appropriately
13 designed for protection within the 20 days shall be covered by the provisions of this Stipulated
14 Protective Order.

15 Transcript pages containing Protected Material must be separately bound by the court
16 reporter, who must affix to the top of each such page the legend “CONFIDENTIAL” or
17 “HIGHLY CONFIDENTIAL-ATTORNEYS’ EYES ONLY,” as instructed by the Party or non-
18 party offering or sponsoring the witness presenting the testimony.

19 (c) for information produced in some form other than documentary, and for
20 any other tangible items, that the Producing Party affix in a prominent place on the exterior of the
21 container or containers in which the information or item is stored the legend “CONFIDENTIAL”
22 or “HIGHLY CONFIDENTIAL- ATTORNEYS’ EYES ONLY.” If only portions of the
23 information or item warrant protection, the Producing Party, to the extent practicable, shall
24 identify the protected portions, specifying whether they qualify as “CONFIDENTIAL” or
25 “HIGHLY CONFIDENTIAL .ATTORNEYS’ EYES ONLY.”

26 5.3 Inadvertent Failures to Designate: If timely corrected, an inadvertent failure to
27 designate qualified information or items as “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL
28 - ATTORNEYS’ EYES ONLY” does not, standing alone, waive the Designating Party’s right to

1 secure protection under this Order for such material. If material is appropriately designated as
2 “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL - ATTORNEYS’ EYES ONLY” after the
3 material was initially produced, the Receiving Party, on timely notification of the designation,
4 must make reasonable efforts to assure that the material is treated in accordance with the
5 provisions of this Order.

6 **6. CHALLENGING CONFIDENTIALITY DESIGNATIONS**

7 6.1 Timing of Challenges: Unless a prompt challenge to a Designating Party’s
8 confidentiality designation is necessary to avoid foreseeable substantial unfairness, unnecessary
9 economic burdens, or a later significant disruption or delay of the litigation, a Party does not
10 waive its right to challenge a confidentiality designation by electing not to mount a challenge
11 promptly after the original designation is disclosed.

12 6.2 Meet and Confer: A Party that elects to initiate a challenge to a Designating
13 Party’s confidentiality designation must do so in good faith and must begin the process by
14 conferring directly (in writing or voice to voice dialogue; other forms of communication are not
15 sufficient) with counsel for the Designating Party. In conferring, the challenging Party must
16 explain the basis for its belief that the confidentiality designation was not proper and must give
17 the Designating Party an opportunity to review the designated material, to reconsider the
18 circumstances, and, if no change in designation is offered, to explain the basis for the chosen
19 designation. A challenging Party may proceed to the next stage of the challenge process only if it
20 has engaged in this meet and confer process first.

21 6.3 Judicial Intervention: A Party that elects to press a challenge to a confidentiality
22 designation after considering the justification offered by the Designating Party may file and serve
23 a motion that identifies the challenged material and sets forth in detail the basis for the challenge.
24 Each such motion must be accompanied by a competent declaration that affirms that the movant
25 has complied with the meet and confer requirements imposed in the preceding paragraph and that
26 sets forth with specificity the justification for the confidentiality designation that was given by the
27 Designating Party in the meet and confer dialogue. The burden of persuasion in any such
28 challenge proceeding shall be on the Designating Party. Until the court rules on the challenge, all

parties shall continue to afford the material in question the level of protection to which it is entitled under the Producing Party's designation.

7. ACCESS TO AND USE OF PROTECTED MATERIAL

7.1 Basic Principles: A Receiving Party may use Protected Material that is disclosed or produced by another Party or by a non-party in connection with this case only for prosecuting, defending, or attempting to settle this litigation. Such Protected Material may be disclosed only to the categories of persons and under the conditions described in this Order. When the litigation has been terminated, a Receiving Party must comply with the provisions of section 11, below (FINAL DISPOSITION).

Protected Material must be stored and maintained by a Receiving Party at a location and in a secure manner that ensures that access is limited to the persons authorized under this Order.

7.2 Disclosure of "CONFIDENTIAL" Information or Items: Unless otherwise ordered by the court or permitted in writing by the Designating Party, any Designating and Receiving Party may disclose any information or item designated CONFIDENTIAL only to:

- (a) the named Plaintiff in this action;
- (b) the Receiving Party's Outside Counsel of record in this action, as well as employees of said Counsel to whom it is reasonably necessary to disclose the information for this litigation;
- (c) the officers, directors, and senior management employees (including House Counsel) of the Receiving Party to whom disclosure is reasonably necessary for this litigation and who have signed the "Agreement to Be Bound by Protective Order" (Exhibit A);
- (d) Experts (as defined in this Order) of the Receiving Party to whom disclosure is reasonably necessary for this litigation and who have signed the "Agreement to Be Bound by Protective Order" (Exhibit A);
- (e) the Court and its personnel;
- (f) court reporters, their staffs, and professional vendors to whom disclosure is reasonably necessary for this litigation ;
- (g) in conjunction with their depositions, witnesses in the action. Pages of

transcribed deposition testimony or exhibits to depositions that reveal Protected Material must be separately bound by the court reporter and may not be disclosed to anyone except as permitted under this Stipulated Protective Order;

(h) the author and/or any identified recipient of the document and/or the original source of the information; and

(i) any person to whom the Designating Party has ever disclosed the document and/or information designated Confidential.

7.3 Disclosure of "HIGHLY CONFIDENTIAL - ATTORNEYS' EYES ONLY" Information or Items:

Unless otherwise ordered by the court or permitted in writing by the Designating Party, a Receiving Party may disclose any information or item designated "HIGHLY CONFIDENTIAL - ATTORNEYS' EYES ONLY" only to:

(a) the Receiving Party's Outside Counsel of record in this action, as well as employees of said Counsel to whom it is reasonably necessary to disclose the information for this litigation;

(b) Experts (as defined in this Order) of the Receiving Party to whom disclosure is reasonably necessary for this litigation and who have signed the "Agreement to Be Bound by Protective Order" (Exhibit A);

(c) the Court and its personnel;

(d) court reporters, their staffs, and professional vendors to whom disclosure is reasonably necessary for this litigation and who have signed the "Agreement to Be Bound by Protective Order" (Exhibit A);

(e) the author and/or any identified recipient of the document and/or the original source of the information; and

(f) any person to whom the Designating Party has ever disclosed the document and/or information designated Confidential

8. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED IN OTHER LITIGATION

1 If a Receiving Party is served with a subpoena or an order issued in other litigation that
2 would compel disclosure of any information or items designated in this action as
3 "CONFIDENTIAL" or "HIGHLY CONFIDENTIAL - ATTORNEYS' EYES ONLY," the
4 Receiving Party must so notify the Designating Party, in writing (by fax, if possible) immediately
5 and in no event within a reasonable amount of time to permit the Designating Party to raise
6 objections to any production of such information after receiving the subpoena or order. Such
7 notification must include a copy of the subpoena or court order.

8 The Receiving Party also must promptly inform in writing the Party who caused the
9 subpoena or order to issue in the other litigation that some or all the material covered by the
10 subpoena or order is the subject of this Protective Order. In addition, the Receiving Party must
11 deliver a copy of this Protective Order promptly to the Party in the other action that caused the
12 subpoena or order to issue.

13 The purpose of imposing these duties is to alert the interested parties to the existence of
14 this Protective Order and to afford the Designating Party in this case an opportunity to try to
15 protect its confidentiality interests in the court from which the subpoena or order issued. The
16 Designating Party shall bear the burdens and the expenses of seeking protection in that court of its
17 confidential material and nothing in these provisions should be construed as authorizing or
18 encouraging a Receiving Party in this action to disobey a lawful directive from another court.

19 **9. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL**

20 If a Receiving Party learns that, by inadvertence or otherwise, it has disclosed Protected
21 Material to any person or in any circumstance not authorized under this Protective Order, the
22 Receiving Party must immediately (a) notify in Writing the Designating Party of the unauthorized
23 disclosures, (b) use its best efforts to retrieve all copies of the Protected Material, (c) inform the
24 person or persons to whom unauthorized disclosures were made of all the terms of this Protective
25 Order, and (d) request such person or persons to execute the "Acknowledgment and Agreement to
26 Be Bound" that is attached hereto as Exhibit A.

27 **10. FILING PROTECTED MATERIAL**

28 All documents containing "CONFIDENTIAL" or "HIGHLY CONFIDENTIAL -

1 ATTORNEYS' EYES ONLY" information that are submitted to the Court shall be provisionally
2 lodged with the Court in appropriately sealed containers on which shall be endorsed the title of
3 the action to which it pertains, an indication of the nature of the contents of the sealed container,
4 the appropriate designation of the documents, and a statement substantially in the following form:

5 "This envelope is sealed pursuant to Order of the Court dated [INSERT DATE] contains
6 Confidential Information, and is not to be opened or the contents revealed except by Order of this
7 Court."

8 A Party who wishes to file Protected Material or to refer in a memorandum or other filing
9 to Protected Material shall file and serve an Administrative Motion to File Under Seal, pursuant
10 to Civil L.R. 79-5 and 7-11, and the Parties must thereafter follow the provisions of Civil L.R. 79-
11 5 and 7-11. It is agreed that the parties' respective motions to seal records shall not be opposed by
12 either party absent a good faith belief on the part of the party opposing the motion that documents
13 or records are improperly designated as "CONFIDENTIAL" or "HIGHLY CONFIDENTIAL –
14 ATTORNEYS' EYES ONLY." A copy of this Protective Order shall be submitted with the
15 lodged materials. Any decision not to oppose a motion to seal information shall not operate as an
16 admission that the information requested to be filed under seal contains or reflects trade secrets,
17 proprietary or commercially sensitive information, or any type of confidential information.

18 The burden of proof is on the party seeking protection to show that such protection is
19 warranted.

20 **11. FINAL DISPOSITION**

21 Unless otherwise ordered or agreed in writing by the Producing Party, within sixty days
22 after the final termination of this action, each Receiving Party must return all Protected Material
23 to the Producing Party. As used in this subdivision, "all Protected Material" includes all copies,
24 abstracts, compilations, summaries or any other form of reproducing or capturing any of the
25 Protected Material. With permission in writing from the Designating Party, the Receiving Party
26 may destroy some or all of the Protected Material instead of returning it. Whether the Protected
27 Material is returned or destroyed, the Receiving Party must submit a written certification to the
28 Producing Party (and, if not the same person or entity, to the Designating Party) by the sixty day

1 deadline that identifies (by category, where appropriate) all the Protected Material that was
2 returned or destroyed and that affirms that the Receiving Party has not retained any copies,
3 abstracts, compilations, summaries or other forms of reproducing or capturing any of the
4 Protected Material.

5 Notwithstanding this provision, Counsel are entitled to retain an archival copy of all
6 pleadings, motion papers, transcripts, legal memoranda, correspondence or attorney work
7 product, even if such materials contain Protected Material. Any such archival copies that contain
8 or constitute Protected Material remain subject to this Protective Order as set forth in Section 4
9 (DURATION), above.

10 The Court's jurisdiction to enforce the terms of the Order shall expire six months after
11 final termination of the action.

12 **12. MISCELLANEOUS**

13 12.1 Right to Further Relief: Nothing in this Order abridges the right of any person to
14 seek its modification by the Court in the future.

15 12.2 Right to Assert Other Objections: By stipulating to the entry of this Stipulation
16 Protective Order no Party waives any right it otherwise would have to object to disclosing or
17 producing any information or item on any ground not addressed in this Stipulated Protective
18 Order. Similarly, no Party waives any right to object on any ground to use in evidence of any of
19 the material covered by this Protective Order.

20 12.3 Amendments: This Protective Order may only be amended by written agreement
21 of the Parties in the form of a written stipulation.

1 12.4 Effective Date: This Protective Order shall be effective immediately upon the
2 Court's approval.

3 **AGREED:**

4 DATED: December 21, 2007

JACKSON LEWIS LLP

5 By: 

6 JoAnna L. Brooks
7 Dylan B. Carp
8 Attorneys for Defendant
9 SIEMENS PRODUCT LIFECYCLE
10 MANAGEMENT SOFTWARE INC.

11 DATED: 12/19, 2007

SCHUBERT & REED LLP

12 By: 

13 Robert C. Schubert
14 Miranda P. Kolbe
15 Attorneys for Plaintiff
16 VANESSA FLINT
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EXHIBIT A

ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND

I, _____ [print or type full name], of
_____ [print or type full address], declare under penalty of
perjury that I have read in its entirety and understand the Protective Order that was issued by the
U.S. District Court for the Northern District of California in the case of Flint v. UGS Corporation,
Case No. C 07 4640 MJJ. I agree to comply with and to be bound by all the terms of this
Protective Order and I understand and acknowledge that failure to so comply could expose me to
sanctions and punishment in the nature of contempt. I solemnly promise that I will not disclose in
any manner any information or item that is subject to this Protective Order to any person or entity
except in strict compliance with the provisions of this Order.

I further agree to submit to the jurisdiction of the Court for the purpose of enforcing the
terms of this Protective Order, even if such enforcement proceedings occur after termination of
this action.

I hereby appoint _____ [print or type full name] of
_____ [print or type full address and telephone number] as my
California agent for service of process in connection with this action or any proceedings related
to enforcement of this Protective Order.

City and State where sworn and signed: _____


Printed Name: _____

Signature: _____

1 Based upon the foregoing Stipulation and good cause appearing,

2 **IT IS SO ORDERED**

3 Dated: 1/3/2008

4 
Hon. Martin J. Jenkins
U.S. District Court Judge